

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36363

STATE OF IDAHO,)	2010 Unpublished Opinion No. 307
)	
Plaintiff-Respondent,)	Filed: January 11, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
RICHARD J. LACROIX,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Gem County. Hon. Juneal C. Kerrick, District Judge.

Order denying motion to correct illegal sentence and granting motion to dismiss the motion to correct illegal sentence, affirmed.

Mimura Law Offices, PLLC, Gem County Public Defenders, Mark J. Mimura, Emmett, for appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Richard J. LaCroix appeals from the district court's order denying his motion to correct an illegal sentence and granting the State's motion to dismiss the motion to correct an illegal sentence. We affirm.

LaCroix was charged with possession of methamphetamine, Idaho Code § 37-2732(c)(1); possession of drug paraphernalia, I.C. § 37-2734; and being a persistent violator, I.C. § 19-2514. He initially entered a not guilty plea. Thereafter, LaCroix changed his plea pursuant to a binding Idaho Criminal Rule 11 plea agreement. Subsequently, LaCroix was allowed to withdraw his guilty plea and the case proceeded to a jury trial in which he was found guilty as charged. LaCroix was sentenced to a unified term of eleven years with five years determinate. This Court affirmed his conviction and sentence in an unpublished decision.

LaCroix filed a motion to correct an illegal sentence under I.C.R. 35. He claimed his sentence was illegal because the State had failed to prove the persistent violator enhancement

beyond a reasonable doubt and that, after he withdrew his guilty plea, the State was required to re-file the persistent violator allegation in order to pursue that charge at trial. After a hearing, the district court entered an order denying LaCroix's motion to correct an illegal sentence and granting the State's motion to dismiss LaCroix's motion. LaCroix appeals.

LaCroix, "mindful" that an I.C.R. 35 motion is not a substitute for appeal, and that sufficiency of the evidence is a matter for appeal, contends nonetheless that his sentence is illegal because of a failure in proof. LaCroix claims that this Court's holding in *State v. Medrain*, 143 Idaho 329, 332, 144 P.3d 34, 37 (Ct. App. 2006) should apply retroactively to his case. In *Medrain*, we held that, in order to prove a persistent violator enhancement, the State must prove beyond a reasonable doubt that the defendant is the person formerly convicted. A certified copy of the former judgment of conviction, together with some other identifying evidence, is necessary and, if the other identifying evidence is lacking, the persistent violator enhancement must be vacated. *Id.* LaCroix provides no argument supporting retroactive application of the evidentiary ruling in *Medrain*. A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). In addition, LaCroix admits that he has failed to include transcripts and exhibits in the record upon which to base his claim.

LaCroix also claims that, after he withdrew his guilty plea, the State was required to re-file the enhancement penalty allegation and that since it failed to do so he was illegally sentenced. The plea agreement upon which LaCroix initially pled guilty stated that the persistent violator enhancement was "conditionally" dismissed based upon the guilty plea. In addition, the plea agreement expressly stated that "if the Defendant is allowed to withdraw his guilty plea in accordance with the terms of this agreement, the Habitual Offender Enhancement shall be reinstated." It provided further that "in other words, the State shall be free to go forward with the prosecution of the Defendant on the charges as set out in the Amended Information." Thus, as the district court correctly noted, the very terms of the I.C.R. 11 plea agreement provided that the State could go forward with the charges in the Amended Information upon a withdrawal of the guilty plea. In addition, LaCroix cites no authority for his claim. A party waives an issue on appeal if either authority or argument is lacking. *Zichko*, 129 Idaho at 263, 923 P.2d at 970.

The district court's order denying LaCroix's I.C.R. 35 motion to correct an illegal sentence and granting the State's motion to dismiss the motion to correct an illegal sentence is affirmed.

Chief Judge LANSING and Judge MELANSON, **CONCUR.**